CONTRACTOR MAY ASSERT BREACH OF IMPLIED WARRANTY AGAINST ARCHITECT

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North Peak Construction, Inc. v. Architecture Plus, Ltd.
Ct. Appeals, Div. One, April 26, 2011

Authored by the JSH Appellate Team

The owners of a lot in Scottsdale hired Architect to create plans for a house that would take advantage of the "extraordinary view" of the city. Although ownership of the lot changed during the design phase, at all times the contract referenced the importance of taking advantage of the city view. The new lot owners contracted with North Peak to build the home. After construction started, North Peak discovered that Architect's plans aligned the home so it faced a water tank rather than the city. As a result, North Peak demolished the work already performed and rebuilt the home, which cost an additional $165,000.

North Peak sued Architect for breach of implied warranty, alleging Architect designed and oriented the home without maximizing the view of the city as expressly required. The trial court dismissed, concluding that the implied warranty claim was essentially a claim for attorneys' fees; and the claim for breach of an implied warranty against a design professional is a tort claim, not a contract claim, so fees were not recoverable.

The court of appeals reversed. Arizona law allows claims for breach of an implied warranty against a design professional, regardless of the lack of privity between North Peak and the Architect. Design professionals impliedly warrant that they have exercised their skills with care and diligence and in a reasonable, non-negligent manner; and here, Architect caused North Peak significant extra costs as a result of flawed plans. However, though the action "sounds in contract" and not in tort, A.R.S. § 12-341.01(A) applies only to claims arising out of implied-in-fact contracts, not implied-in-law contracts. Because the implied warranty is created (implied) by law, § 12-431.01(A) does not apply. North Peak could not seek attorneys' fees under the statute.